

REMARKS

I. STATUS OF THE CLAIMS

Claims 1-4, 6-10, 15, 18, 20-21, 26 and 48-52 were pending in the present application. Upon entry of this Amendment, claims 1 and 48 will have been amended. Claims 1-4, 6-10, 15, 18, 20-21, 26, 41-45 and 48-52 thus remain pending in the present application. No new matter has been added.

II. CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 1, 2, 4, 6-10, 15, 18, 20 and 50-52 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,890,355 to *Michelson* (“Michelson”) in view of U.S. Patent No. 5,192,327 to *Brantigan* (“Brantigan”) and U.S. Patent No. 6,682,562 B2 to *Viart et al.* (“Viart”). Claim 21 is rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,890,355 to *Michelson* (“Michelson”) in view of U.S. Patent No. 5,192,327 to *Brantigan* (“Brantigan”) and U.S. Patent No. 6,682,562 B2 to *Viart et al.* (“Viart”) and further in view of U.S. Patent No. 6,143,033 to *Paul et al.* (“Paul”). Claim 26 is rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,890,355 to *Michelson* (“Michelson”) in view of U.S. Patent No. 5,192,327 to *Brantigan* (“Brantigan”) and U.S. Patent No. 6,682,562 B2 to *Viart et al.* (“Viart”) and further in view of U.S. Patent No. 5,306,309 to *Wagner et al.* (“Wagner”). Claims 48 and 49 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,890,355 to *Michelson* (“Michelson”) in view of U.S. Patent No. 5,192,327 to *Brantigan* (“Brantigan”). The rejection is traversed.

Michelson discloses an implant 100 having a leading end 102 for insertion first into the disc space between two adjacent vertebral bodies and a trailing end 104 opposite leading end 102, and opposite sides 110, 112 therebetween. Leading end 102 is preferably configured to match the contour of a leading edge 52 of an implantation space 50 and trailing end 104 is preferably configured to conform to the contour of the anterior aspect of the vertebral body at trailing portion 54 of the implantation space 50. Sides 110, 112 are generally planar and preferably correspond to the configuration of side edges 56,

58 of the implantation space 50. The implant 100 further comprises upper and lower surfaces 106, 108 in an angular relationship to each other from trailing end 104 to leading end 102 for allowing for angulation of the adjacent vertebral bodies relative to each other. Preferably, upper and lower surfaces 106, 108 are non-arcuate in a direction along the mid-longitudinal axis of implant 100. Implant 100 preferably has a maximum height that is less than the maximum width of the implant.

Brantigan teaches a device 10 that is an oval ring plug 11 generally shaped and sized to conform with the disc space between adjoining vertebrae in a vertebral column. The plug 11 has opposed sides 11a and ends 11b, flat, ridged top and bottom faces 11c and a central upstanding aperture 11d therethrough.

Viart discloses an intervertebral disc prosthesis comprising an upper plate (2) and a lower plate (3) anchored respectively on the upper end-plate and the lower end-plate of the vertebral bodies of the vertebrae lying above and below a spine. A central core (4) is placed between the two plates (2, 3) which have an upper spherical cap (13) and a lower spherical cap (14) co-operating respectively with the spherical impressions (9) arranged in said upper and lower plates. An annular element (5) made of viscoelastic material is centered about the core (4). Each plate, upper 2 and lower 3, has an outer face 6 integral with teeth 7 to allow said plates to become anchored in, respectively, the upper and lower end plates of the vertebral bodies of the overlying and underlying vertebrae.

Applicant has amended independent claims 1 and 48 to include the recitation that a top and bottom are non-planar, the top and bottom are convex in profile when viewed from the anterior or posterior face, the top and bottom taper in an asymmetric shape. (See Figures 23-26 and page 25 of the specification, lines 8-9).

Neither Michelson, Brantigan and Viart, either alone or in combination, teach non-planar top and bottom surfaces that are convex in profile when viewed from the anterior or posterior face and taper in an asymmetric shape. Michelson and Brantigan each teach an implant having a generally planar top and bottom face and Viart teaches an implant having planar upper and lower plates. Applicant claiming the top and bottom surface being non-planar, convex top and bottom surface and the top and bottom tapering in an asymmetric shape is not merely a matter of design choice but aids in providing spinal

lordosis. (See page 25 of the specification, lines 8-9).

As discussed above, Michelson, Brantigan and Viart, either alone or in combination do not disclose all of the elements of amended claims 1 and 48. Claims 2-4, 6-10, 15, 18, 20-21, 26 and 49-52 which depend from either independent claim 1 or 48, are also believed to be allowable for at least the reasons discussed in connection with independent claims 1 and 48, as well as on their own merits. Thus, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a).

CONCLUSION

In view of the claim amendments and the foregoing remarks, the various rejections of the claims 1-4, 6-10, 15, 18, 20-21, 26 and 48-52 set forth in the Office Action of October 8, 2010 have been addressed and overcome. All claims are thus in condition for allowance and an early Notice of Allowance is earnestly solicited. If issues may be resolved through an Examiner's Amendment, or clarified in any manner, a call to the undersigned attorney at (404) 879-2479 is solicited.

The Commissioner is hereby authorized to charge any fees due, or credit any overpayment, to Deposit Account No. **09-0528**.

Respectfully submitted,



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